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Note verbale dated 28 October 2010 from the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council

The Permanent Mission of Iraq to the United Nations presents its compliments to the office of the President of the Security Council of the United Nations, and has the honour to transmit herewith a letter from H.E. Hoshyar Zebari, Minister for Foreign Affairs of the Republic of Iraq (see annex), together with the quarterly report regarding the action plan and timeline for the transition to successor arrangements for the Development Fund for Iraq, in accordance with paragraph 5 of Security Council resolution 1905 (2009) (see enclosure). It would be highly appreciated if the present letter and its annex could be circulated to the members of the Security Council and issued as a document of the Security Council.

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Annex to the note verbale dated 28 October 2010 from the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council

[Original: Arabic]

Republic of Iraq
Ministry of Foreign Affairs
Minister's Office

Pursuant to Security Council resolution 1905 (2009), paragraph 5, which requests the Government of Iraq to report to the Security Council on a quarterly basis and provide an action plan and timeline for the transition from the Development Fund for Iraq, I have the honour to transmit to you herewith the third quarterly report of the Government of Iraq, which includes an assessment of progress against the action plan. The report was prepared by the ministerial committee which is chaired by the Deputy Prime Minister and was established pursuant to Council of Ministers Decision No. 25 of 2010 with a view to setting up a comprehensive mechanism to ensure the protection of Iraqi assets once the mandate of the Development Fund expires.

I should be grateful if you would have the present letter and its annexes circulated to the members of the Security Council without delay.

(*Signed*) Hoshyar **Zebari**
Minister for Foreign Affairs of the Republic of Iraq
Baghdad, 26 October 2010

Enclosure

Third quarterly report of the Government of Iraq

Pursuant to paragraph 5 of Security Council resolution 1905 (2009); further to the second quarterly report of the Government of Iraq (S/2010/365) and the first quarterly report (S/2010/153), both of which were prepared by the relevant ministerial committee that is chaired by the Deputy Prime Minister and was established pursuant to Council of Ministers Decision No. 25 of 2010 with a view to setting up a comprehensive mechanism to ensure the protection of Iraqi assets once the mandate of the Development Fund for Iraq comes to an end under Security Council resolution 1905 (2009); in the light of the observations made by the Secretary-General in his report (S/2010/359), submitted pursuant to Security Council resolution 1905 (2009), paragraph 3; and having due regard to the consensus among the members of the Security Council that the third quarterly report of Iraq should be the final report, the Government of Iraq would like to provide the information that is set forth below.

1. The completed parts of the action plan and timetable for the transition to successor arrangements for the Development Fund for Iraq

In resolution 1905 (2009), paragraph 5, the Security Council calls upon the Government of Iraq to put in place the necessary action plan and timeline by 1 April 2010 and to ensure the timely and effective transition to a post-Development Fund mechanism by 31 December 2010. The first quarterly report of the Government of Iraq (S/2010/153) contains information on the action plan and timeline to ensure the transition to successor arrangements for the Development Fund for Iraq by December 2010. As far as the Government of Iraq is concerned, the implementation of this plan is known to depend, to some extent, on its success in resolving the debts and settling the claims of companies and individuals and, mainly, on the possibility of protecting Iraqi assets and oil revenues in keeping with Security Council resolution 1483 (2003), paragraph 20.

In the period following the submission of the second quarterly report, the Government of Iraq continued its endeavours to determine the immunities to be granted to Central Bank of Iraq reserves and Iraqi Government assets, in accordance with the jurisdiction of the States in which Iraq intends to open accounts. The Governor of the Central Bank of Iraq held formal consultations with Banque de France (the central bank of France) on the margins of the annual meetings of the World Bank Group and International Monetary Fund, which were held in Washington from 8 to 10 October 2010. However, these endeavours and those that preceded them did not produce any results that improved on the situation described in Iraq's second quarterly report: the proposed immunity offered by the foreign banks and institutions that were contacted did not match that provided by a Security Council resolution adopted under Chapter VII of the Charter of the United Nations. In its second quarterly report, the Government of Iraq stated that, in its third report, it would determine its position on whether or not the immunities should be maintained, in the light of contacts with foreign banks and financial institutions and legal arrangements in regard to the claims inherited by Iraq from the former regime. Although the Government of Iraq has put in place legal arrangements to address the aforementioned claims, it has not obtained the necessary guarantees to ensure the protection of Iraqi assets. It therefore finds itself compelled to request a one-year

extension with respect to the protection afforded to the Development Fund for Iraq. It looks to the Security Council to consider its request sympathetically, taking due account of the difficulties with which Iraq has to contend; the fact that, as of the time of writing, political blocs and entities in Iraq have yet to reach agreement on the formation of a new Government after the parliamentary elections held on 7 March 2010; bearing in mind the considerable progress made by the Government of Iraq in resolving sovereign debt and settling commercial claims, claims inherited from the former regime and contracts outstanding from the Oil-for-Food Programme; and also bearing in mind the significant steps taken by the Government to apply the action plan and timeline for transition to successor arrangements, as set out in the first quarterly report of Iraq.

2. The status of the debts and programme of the Government of Iraq, including the bilateral agreements with countries that are not members of the Paris Club

(a) Bilateral agreements with countries that are not members of the Paris Club: Reference is made in the second quarterly report to letters from the Minister of Finance of Iraq addressed to creditor States outside the Paris Club. By way of follow-up to that correspondence, contacts were made with Pakistan, Poland, Turkey and Brazil respectively. However, no tangible and definitive progress has been made in resolving the debts with these countries, owing to technical factors related to the nature of the claims, the dates used to calculate overdue interest or the global financial crisis. Houlihan Lokey, the institution retained as a financial adviser to the Ministry of Finance of Iraq, is following up on the debt issue with the creditor States. In this connection, Iraq looks to the international community to assist it in finding a settlement of these debts.

With regard to the debts owed to the Gulf Cooperation Council, the situation described in Iraq's second quarterly report continues to obtain. The assistance of fraternal and friendly States may be needed to expedite the settlement of these debts, in the light of the steps taken by the Paris Club to resolve Iraqi debt.

(b) Commercial claims: In the two previous quarterly reports, the Government of Iraq described the scheme which it had adopted to settle company claims consisting of an offer to make a cash payment amounting to 10.25 per cent of the total debt owed. This scheme was still in effect at the time of writing this report. In this regard, we should like to explain that there are two types of commercial claims, as set forth below:

- Claims from commercial creditors that participated in previous settlement offers but rejected them because they were not convinced by the cash payment proposition. The claims in this category amount to approximately $774 million. The group of companies concerned includes the British companies mentioned in the second quarterly report. These companies are now participating in a fresh, unilateral settlement offer.

- Claims from commercial creditors that did not participate in previous settlement offers made by the Government of Iraq and did not file claims with Ernst & Young, the accountancy and auditing firm retained to represent the Ministry of Finance of Iraq. To date, it has not been possible to determine the size, legitimacy and credibility of these claims. The only way to do so would be by subjecting them to thorough scrutiny. Iraq is apprehensive that these unidentified commercial creditors may attempt to seize Iraqi funds and assets

abroad once the immunity granted by Security Council resolutions, of which Security Council resolution 1905 (2009) is the most recent example, has been lifted. The Government of Iraq therefore looks to the international community to assist it in this matter and consider the possibility of including in a future Security Council resolution extending immunity for the Fund a provision to the effect that the Government of Iraq will not be liable for such claims after June 2011. Such an instrument would considerably facilitate the process of lifting immunity from the Development Fund for Iraq and would pave the way for the transition to successor arrangements.

(c) Contracts outstanding from the Oil-for-Food Programme: The Government of Iraq is pursuing its contacts with the United Nations Secretariat, in particular the Office of the Controller, in order to deal with contracts outstanding from the Oil-for-Food Programme by paying the amounts indicated, based on the documentation received. At a meeting held in Amman on 16 October 2010 between Iraqi experts and the Office of the Controller, procedures for expediting the settlement of these claims were discussed, particularly in respect of 26 contracts for which payment had been requested from Iraq, in addition to other contracts for which documents may be received by the deadline set for the end of the programme, namely, the end of 2010. In this regard, the Government of Iraq agrees with the comment made by the Secretary-General in his second quarterly report (S/2010/359): "Absent the receipt by the Secretariat of the requisite confirmations of arrival of the remaining letters of credit, the Security Council may wish to consider cancelling those remaining letters of credit that have outstanding claims of delivery."

(d) Individual claims inherited from the previous regime: As mentioned in Iraq's second quarterly report, the draft legal agreement between the Government of Iraq and the State concerned aimed at settling these claims was submitted to the Iraqi legal authorities for consideration. The draft agreement was reviewed and transmitted to the Council of Ministers, which approved it pursuant to its Decision No. 306 of 2010. The draft agreement was then forwarded to the Council of Representatives for adoption.

3. Assessment of improved financial and administrative oversight

The Government of Iraq has taken the following steps:

(a) Iraqi ministries currently operate in accordance with the laws and structural charts that are in force, some of which are being updated in order to be brought into line with the changes that have taken place in the nature of ministry work and are at various stages in the approval process, being considered by the Council of Ministers, the Consultative Council or the Council of Representatives. It is expected that the updated laws will be enacted once Parliament has been convened and a Government formed.

(b) The Ministry of Finance has a valid job descriptions guide which is used by all ministries, some of which have updated their job descriptions to reflect the changes that have taken place in their activities. They will be approved when a Government has been formed.

(c) The committee that is responsible for selecting the chairman and members of the Federal Board of the Civil Service is continuing the work of identifying persons suitable for those positions. A total of 39 suitably qualified

candidates have been proposed and a final list of names will be forwarded to the Commission on Public Integrity for a report on their financial probity.

(d) The Ministry of Finance has gathered together and unified financial instructions and is currently circulating them to ministries for action.

(e) The comprehensive oil metering and calibration system: In coordination with the Committee of Financial Experts, the financial Audit Board is, on a quarterly basis, following up with the Ministry of Oil each stage in the development of that system. The Committee of Experts has been informed of the status of implementation of the system as of 30 June 2010. Price Waterhouse has produced an evaluative report on the system and submitted it to the International Advisory and Monitoring Board for Iraq at the meeting that was held in Amman on 14 and 15 October 2010. Set forth below is the status of meters at Iraqi ports from which crude oil is exported.

Basra Oil Port

Work is continuing on use of the system to meter crude oil exported from the port. A contract will be entered into with a new third tester when the service contract of SGS ends.

Khawr Al Amaya Oil Port

A metering system comprising 12 meters has been installed and will be brought into operation when SGS, the third tester, issues standardization certification. Currently, measures are taken using standards that are acceptable in Iraq and internationally.

The Turkish port of Jihan

The State Oil Marketing Organisation has concluded a contract with a third tester, Inspectorate Hellas, to operate in this port. Since the beginning of September 2010, that company, in coordination with the North Oil Company and the Turkish side, has been supervising export volumes, using the above-mentioned systems and tanker size, which constitutes an additional measure (see enclosure 1: a table that sets out implementation as of 30 September 2010 of the plan to install meters and transfer ownership).

(f) With regard to follow-up to the issue of Iraqi funds abroad, that issue is the concern of the ministerial committee that was established for the purpose at the Council of Ministers meeting of 15 March 2007. There have been no new developments in that field since the second quarterly report.

(g) With respect to completion of the final State financial statement for 2008, on 6 September 2010, the financial Audit Board issued report No. 11298/3/3/4 and the Board of Supreme Audit is responsible for auditing the final statement for 2009 while awaiting submission of the financial data in their final form.

(h) Continual meetings between the heads of audit teams of the Board of

clarified a number of the observations that appeared in the [illegible] observations of the external auditor for the Development Fund for Iraq, as set forth in the table below:

Cleared observations	*Observations under clearance*	*Still valid observations*	*Total*
180 (62 per cent)	88 (30 per cent)	23 (8 per cent)	291 (100 per cent)

Still valid observations are being closely followed up. Most, including those concerning war damage, the automation of financial and administrative systems and American agency contracts, require to be addressed at the legal and administrative levels. It should be noted that the observations that appear in the draft KPMG report on the 2009 audit of the Development Fund for Iraq have been discussed in detail with a representative of that company and it has been agreed that the final report will be submitted in early October 2010.

4. Conclusions

- On the basis of the action plan and timeline that were put forward by the Government of Iraq in its first quarterly report, significant steps have been taken with regard to the settlement of sovereign debt, commercial claims and the claims inherited from the previous regime; contracts outstanding from the Oil-for-Food Programme; and improved financial and administrative oversight.
- The Government of Iraq wishes to close the Oil-for-Food Programme at the end of 2010, by paying the amounts due for contracts where receipt is documented and annulling contracts for which no such documentation is available, as the Security Council deems appropriate.
- The immunity offered to Iraq by foreign banks and financial institutions does not match that provided by Security Council resolution 1483 (2003) under Chapter VII of the Charter of the United Nations.
- Iraq is apprehensive that commercial creditors who were not involved in the settlement offers put forward since 2004 by the Government of Iraq through Ernst & Young may seize Iraqi funds and assets abroad once immunity has been lifted from the Development Fund for Iraq. The Government therefore considers it important that a future Security Council resolution concerning the immunity of that Fund should include a paragraph to the effect that Iraq will not be liable for such claims after June 2011. Such a statement will considerably facilitate the process of lifting immunity from the Development Fund for Iraq.
- Immunity for the Development Fund for Iraq should be extended for a further year, on the basis of the foregoing and of the statement concerning follow-up to the second quarterly report of the Government of Iraq that was made by the Committee of Financial Experts at the Security Council meeting of 12 July 2010, and taking into consideration current conditions in Iraq; the fact that political blocs and entities in Iraq have, as of the time of writing, yet to reach agreement over the formation of a new Government after the elections that were held on 7 March 2010, which has, in one way or another, affected the ability of Government institutions to promptly and comprehensively implement and meet requirements for the timeline for transition to successor

Advisory and Monitoring Board for Iraq.

Attachment

Outcome of implementation of the plan for the installation of meters to 30 September 2010

	(1)	(2)	(3)	(2/3)
Company	*Total plan*	*Planned to 30 September 2010*	*Implemented to 30 September 2010*	*Percentage of implementation*
Exporting companies				
North Oil Company	188	76	86	113
South Oil Company	137	16	43	269
Maysan Oil Company	65	12	29	242
Distributors				
North Refineries Company	239	239	195	82
Midlands Refineries Company	592	107	187	175
South Refineries Company	137	67	24	36
North Gas Company	69	28	39	139
South Gas Company	20	8	3	38
Oil Pipelines Company	410	402	365	91
Oil Products Distribution Company	2 992	2 313	695	30
Gas Filling Company	49	34	25	74
Total	**4 898**	**3 302**	**1 691**	**51**

Signatures of those who attended the meeting of the ministerial committee for the protection of Iraqi assets that was held on Tuesday, 19 October 2010.

Chairman of the Committee: Rowsch Nuri Shaways, Deputy Prime Minister

Members:

Hoshyar Zebari, Minister for Foreign Affairs

Baqir Jabr Al-Zubaidi, Minister of Finance

Hussein Al-Shahrastani, Minister of Oil

Aly Ghaleb Baban, Minister of Planning

Dara Nurredin Dara, Minister of Justice

Fadhil Muhammad Jawad, State Legal Counsel

Sanan Shubaibi, Governor of Central Bank of Iraq

Abdul-Basit Turki Said, President of the Board of Supreme Audit